

R E M A R K S

Claims 1, 2, 5, 6, 9, 11, 12, 18-21, 24, 29, 31, 33-35 are pending in this application.

In the Advisory Action of March 23, 2006, the Examiner asserts that the Examples found in US 2004/005789 failed to support the utility of the invention as claimed because the evidence of the examples is “not commensurate in scope with the claims.” The Examiner asserts that the examples of the US ‘789 publication do not support the utility of proteins having “80% identity with SEQ ID NO: 2” or of proteins encoded by sequences which hybridize to SEQ ID NO:1.

Applicants traverse this rejection and withdrawal thereof is respectfully requested. Applicants note initially that the instant claims have been amended in claim 1, for example, to be drawn to an isolated gene encoding 90% identity with the amino acid sequence listed as SEQ ID NO:2 of the Sequence Listing through the conservative substitution of one or more amino acids and also binding to an antibody or an antibody fragment that is active to induce granulocyte colony-stimulating factor.

The Examiner has failed to support evidence (or even arguments) as to why she believes that the data of the examples of the US ‘789 publication would not be expected to extend to proteins having 90% (or even 80%) sequence identity to SEQ ID NO:2 through only conserved amino acid substitutions or to proteins encoded by sequences that which hybridize to SEQ ID NO:1.

Conclusion

Entry of the above amendments is earnestly solicited. An early and favorable first action on the merits is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact MaryAnne Armstrong, Ph.D. (Reg. No. 40,069) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated:

APR 19 2006

Respectfully submitted,

By mace

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